

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE ARC AIRBAGS INFLATORS
PRODUCTS LIABILITY
LITIGATION

MDL No. 3051
Case No. 1:22-md-3051-ELR

Hon. Eleanor L. Ross

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' NOTICE OF
SUPPLEMENTAL AUTHORITY IN
OPPOSITION TO DEFENDANTS'
MOTIONS TO DISMISS¹**

Plaintiffs' Notice of Supplemental Authority (Dkt. 276) (the "Notice") argues that Judge Thrash's recent decision in *Bolling v. Mercedes-Benz USA, LLC*² ruled in plaintiffs' favor on issues germane to this case and suggests that this Court should do the same. Not only does *Bolling* not support plaintiffs' arguments in this case, it actually supports Defendants' arguments on several issues.

In *Bolling*, the plaintiffs *all* experienced the defect in question (a shattered sunroof), while here, *none* of the plaintiffs have experienced the alleged inflator rupture defect. 2024 WL 3972987, at *1. *Bolling* was a single putative class action filed in this District (*id.*), not an MDL that combines cases filed in myriad federal courts across the country. *Bolling* involved only six named plaintiffs from five states

¹ All Defendants join in filing this Response.

² 2024 WL 3972987 (N.D. Ga. Aug. 27, 2024).

(*id.*), not 115 named plaintiffs from 36 states. And in *Bolling*, the plaintiffs *all* purchased vehicles allegedly manufactured by two Mercedes-Benz entities (*id.*), whereas plaintiffs here purchased vehicles manufactured by or containing parts from a selection of nine different manufacturers and five different Tier-1 and Tier-2 suppliers. These distinct facts and circumstances form the basis for many of the *Bolling* court’s rulings. For example:

- ***Choice of Law.*** Because *Bolling* was a single class action filed in this district, the court applied Georgia law to many of the claims in that case. But while a federal court sitting in diversity generally applies the choice-of-law rules of its forum state, MDL courts must apply the choice-of-law rules of the forum where the individual underlying complaint was (or would have been) filed. *See* Dkt. 181-1 at 8-9.
- ***Shotgun Pleading.*** In ruling that the two Mercedes defendants were not denied notice of the specific claims against them, the court pointed to the fact that, as affiliated entities, the two defendants were “related” to each other. 2024 WL 3972987, at *7. While the two defendants’ corporate connection should not deprive each of them of fair notice of the allegations directed at them, that is a far cry from the complaint here where plaintiffs have sued five unrelated Tier-1 and Tier-2 suppliers and nine unrelated manufacturers without specifying which plaintiffs are suing which defendants on which claims; without identifying the alleged conduct or products of each defendant; and without describing what each defendant allegedly knew about the inflators or when and how they gained any such knowledge. That is textbook shotgun pleading. *See* Dkt. 178-1 at 11-12.
- ***Standing.*** In *Bolling*, the court addressed whether the plaintiffs—all purchasers of Mercedes vehicles—had standing to assert claims against Mercedes on behalf of putative class members who also purchased Mercedes vehicles (of different models/model-years) and resided in the same states as the named plaintiffs. Here, plaintiffs lack standing to assert claims under the

laws of *different* states in which no plaintiff resides or sustained any injury; plaintiffs who purchased one manufacturer's vehicle lack standing to sue completely *different* manufacturers; and plaintiffs bring hundreds of claims against *multiple* manufacturers and suppliers with distinct roles in the supply chain, while failing to trace their injury to any particular defendant's conduct. *See* Dkt. 181-1 at 6-8.

While *Bolling* is highly distinguishable and thus inapposite in the above respects, *Bolling* does support several of Defendants' arguments for dismissal. For example:

- ***Pre-suit Notice.*** The court found that, just as in this case, certain plaintiffs in *Bolling* failed to allege facts showing that they informed Mercedes of the sunroof defect before filing suit and, therefore, those plaintiffs failed to satisfy the pre-suit notice requirement for express or implied warranty claims. 2024 WL 3972987, at *9.
- ***NHTSA Investigation; Knowledge.*** In *Bolling*, the plaintiffs argued the existence of a NHTSA investigation created a presumption that Mercedes knew about the sunroof defect. *Id.* at *15. The court disagreed, finding that the investigation contained no indication that Mercedes knew about the defect—it focused only on a narrow subset of class vehicles and never concluded that the defect existed. *Id.* Similarly here, NHTSA's investigation began *after* production of many class vehicles, and plaintiffs otherwise fail to identify anything in the investigation to suggest that defendants knew about the alleged defect. *See* Dkt. 181-1 at 24-27.
- ***Unjust Enrichment.*** The *Bolling* court dismissed unjust enrichment claims on the same grounds asserted in defendants' pending motions—*i.e.*, plaintiffs cannot assert a claim for unjust enrichment if they also assert a contract-based express warranty claim, where the existence of the warranty is not disputed by the parties. *Id.* at 41-43.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 4, 2024, a copy of the foregoing was served electronically through the Court's electronic filing system on all parties appearing on the Court's ECF service list.

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